

CONTRACTOR SERVICES AGREEMENT

Lee Bell Neighborhood Park Play Equipment Installation and Enhancement

THIS AGREEMENT is made at Fairfield, California, as of May 22, 2017, by and between the City of Fairfield, a municipal corporation (the "CITY") and MIRACLE PLAYSYSTEMS ("CONTRACTOR"), who agree as follows:

1) SERVICES. Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to the CITY the services described in Exhibit "A," which consists of the proposal submitted by CONTRACTOR. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit "A."

2) PAYMENT. CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit "B." The payments specified in Exhibit "B" shall be the only payments to be made to CONTRACTOR for services rendered pursuant to this Agreement. CONTRACTOR shall submit all billings for said services to the CITY in the manner specified in Exhibit "B."

3) FACILITIES AND EQUIPMENT. CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

4) GENERAL PROVISIONS. The general provisions set forth in the City of Fairfield Standard Specifications and Details, latest edition and Exhibit "C" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the provisions set forth in Exhibit "C" shall control.

5) INSURANCE REQUIREMENTS. The insurance requirements set forth in Exhibit "D" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the requirements set forth in Exhibit "D" shall control.

6) EXHIBITS. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

7) TERM. This agreement shall be in effect until the scope of work is complete.

EXECUTED as of the day first above-stated.

City of Fairfield, a municipal corporation

By: [Signature]

CONTRACTOR

By: [Signature] President

EXHIBIT "A"



MIRACLE PLAYSYSTEMS

PO BOX 263

ALAMO, CA 94507

T: 800-879-7730 DIR # 1000015853

F: 510-893-2163 CSL # 981433

Estimate

Date	Estimate #
4/26/2017	E2016-2153

Name / Address
City of Fairfield Accounts Payable 1000 Webster Street Fairfield, CA 94533-0672

Ship To
Lee Bell Park 1401 Wasington Fairfield, CA 94533

Terms	P.O. No.	Rep	Project Name	
See Below		KS	Lee Bell_003	
Description	Qty	Rate	Total	
Custom Off Road Vehicle	1	10,600.00	10,600.00T	
Custom Fighter plane	1	9,300.00	9,300.00T	
Large Hop Rock	1	982.00	982.00T	
Custom Airport tower with nets	1	20,100.00	20,100.00T	
Medium hop Rocks	1	421.00	421.00T	
Rubber hop rocks	2	478.00	956.00T	

INDEMNITY

Client/Owner shall defend, indemnify and hold harmless Miracle Playsystems, Inc, its officers, directors, board of trustees, agents, or employees and each of them, from any and all claims, demands, causes of action in law or in equity, damages, penalties, costs, expenses, reasonable attorneys' fees, reasonable experts' fees, reasonable consultants' fees, judgments, losses or liabilities, of every kind and nature whatsoever arising out of or in any way connected with or incidental to, the performance of the services under this Agreement or any of the obligations contained in this Agreement ("Claims"). Without limitation, "damages" include personal injury, including, but not limited to bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Miracle Playsystems, Inc, or any other supplier/contractor/consultant or any person, or other damages of any kind to anyone including, without limitation, economic loss, property damage and loss of use thereof. It is expressly acknowledged and agreed that each of the foregoing indemnities is independent, that each shall be given effect, and that each shall apply despite any acts or omissions, misconduct or negligent conduct, whether active or passive, on the part of, or other contractor(s); provided, however, Miracle Playsystems, Inc duty to indemnify shall be limited to the percentage or the degree Miracle Playsystems, Inc comparative negligence caused any damages.

STANDARD NOTES:

- Price quotation is good for 90 days. Accurate color selections must be made in writing prior to equipment going into production. Colors to be confirmed with your local sales representative.
- PLEASE MAKE PURCHASE ORDER AND CHECK TO MIRACLE PLAYSYSTEMS, INC at PO Box 263 Alamo, CA 94507
- Please email/fax quotation with your signature to accept this quote and place order. Fax 510-893-2163 or email Info@MiraclePlayGroup.com
- Unless otherwise specified, Miracle Playsystems, Inc DOES NOT include the following in this proposal:
- Engineered drawings
- Installation of equipment or other site amenities
- Specialty trades, equipment, power supply required to install equipment
- Any insurance requiring in excess of \$1M/\$2M per occurrence, special insurance coverage or wording, Prevailing/Certified wage rates, local permitting, bid/performance bonds, temp fencing, geo tech surveys, playground safety inspection, equipment offload, and testing services.

TERMS & CONDITIONS:

- Purchase contract terms & conditions of sale: The client/customer's acceptance and understanding of these terms & conditions and all other supporting documentation provided as part of this package is evidenced by signing of this estimate/quote.
- Payment terms: Standard terms (on approved credit), unless otherwise noted are 50% with order and balance to ship equipment (no retention). Should any changes be required to the products after order is placed, modifications or changes will be at client/customer's expense. Miracle Playsystems, Inc maintains a no return policy and asks all clients to determine feature, layout and color selection prior to ordering. Should any order be cancelled after production has started a 10% restocking fee will be charged to client. Credit card processing fees are 5% which will be added to all credit card charges
- Lead times: Estimated lead times for the time the order is released into production until it is delivered will vary and are as follows:
- 5-6 weeks for standard (non-custom) play features for US based manufacturers;
- 10-12 weeks standard play features (non-custom) from European & Canadian manufacturers. Expedited Air Freight is available for additional cost (calculated on case by case basis).

CONSTRUCTION SERVICES (if applicable):

Unless otherwise noted, we exclude responsibility for material delivery & offloading equipment, removal & disposal of packaging accumulated by equipment packaging, project security, landscape & hardscape repair based on access route to site, delays or returns due to layout conflicts or delay of other trades, removal of spoils from job site, locating underground: utilities, pipes, obstructions in work area, conditions unforeseen and/or not disclosed at time of estimate, permits, engineering, material testing, soil samples, CPSI. Conditions: Grades; stable, compacted & workable with 95% compaction and less than 1% grade, adequate access to site for labor, materials, tools and equipment. Estimate good for 90 days from quote. Terms: Upon completion.

GENERAL TERMS:

- THIS QUOTE IS LIMITED TO AND GOVERNED BY THE TERMS CONTAINED HEREIN: Miracle Playsystems, Inc objects to any other terms proposed by client, in writing or otherwise, as material alterations, and all such proposed terms shall be void. Client authorizes Miracle Playsystems, Inc to ship equipment and agrees to pay the total specified. Shipping terms are FOB the place of shipment via common carrier.
- Client and owner/operator agree to indemnify and hold Miracle Playsystems, Inc harmless from and against all liabilities, losses, penalties, damages and expenses, including costs and attorney fees, resulting from any and all claims, liens, damages, actions, suits, judgments or settlements, injuries arising or alleged to arise out of their failure, or failure of architect, contractors, subcontractors, installers, employees, agents and assigns to assemble, install, inspect and/or maintain the play equipment and impact absorbing surfacing in full compliance with each manufacturers installation instructions and safety requirements and their misuse and/or alteration of the play equipment.

Subtotal

Sales Tax (8.375%)

Total



MIRACLE PLAYSYSTEMS

PO BOX 263
ALAMO, CA 94507
T: 800-879-7730 DIR # 1000015853
F: 510-893-2163 CSL # 981433

Estimate

Date	Estimate #
4/26/2017	E2016-2153

Name / Address
City of Fairfield Accounts Payable 1000 Webster Street Fairfield, CA 94533-0672

Ship To
Lee Bell Park 1401 Wasington Fairfield, CA 94533

Terms	P.O. No.	Rep	Project Name	
See Below		KS	Lee Bell_003	
Description	Qty	Rate	Total	
Freight charge	1	2,000.00	2,000.00	
Installation of noted play items above to spec of fully prepared site (by others)	1	17,488.00	17,488.00	
Wood Fiber delivered and installed in play box at 25x33	50	44.89	2,244.50T	
Temporary Fencing		2,844.00	2,844.00T	
Excavation of Box (client to supply truck for offload)		3,455.00	3,455.00	
New Panelized fencing to match existing		6,899.00	6,899.00	

INDEMNITY

Client/Owner shall defend, indemnify and hold harmless Miracle Playsystems, Inc, its officers, directors, board of trustees, agents, or employees and each of them, from any and all claims, demands, causes of action in law or in equity, damages, penalties, costs, expenses, reasonable attorneys' fees, reasonable experts' fees, reasonable consultants' fees, judgments, losses or liabilities, of every kind and nature whatsoever arising out of or in any way connected with or incidental to, the performance of the services under this Agreement or any of the obligations contained in this Agreement ("Claims"). Without limitation, "damages" include personal injury, including, but not limited to bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Miracle Playsystems, Inc, or any other supplier/contractor/consultant or any person; or other damages of any kind to anyone including, without limitation, economic loss, property damage and loss of use thereof. It is expressly acknowledged and agreed that each of the foregoing indemnities is independent, that each shall be given effect, and that each shall apply despite any acts or omissions, misconduct or negligent conduct, whether active or passive, on the part of, or other contractor(s); provided, however, Miracle Playsystems, Inc duty to indemnify shall be limited to the percentage or the degree Miracle Playsystems, Inc comparative negligence caused any damages.

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- Unless otherwise specified, Miracle Playsystems, Inc DOES NOT include the following in this proposal:
- Engineered drawings
- Installation of equipment or other site amenities
- Specialty trades, equipment, power supply required to install equipment
- Any insurance requiring in excess of \$1M/\$2M per occurrence, special insurance coverage or wording, Prevailing/Certified wage rates, local permitting, bid/performance bonds, temp fencing, geo tech surveys, playground safety inspection, equipment offload, and testing services.

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CONSTRUCTION SERVICES (if applicable):

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Subtotal

Sales Tax (8.375%)

Total



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Estimate

Date	Estimate #
4/26/2017	E2016-2153

Name / Address
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Ship To
Lee Bell Park 1401 Wasington Fairfield, CA 94533

Terms	P.O. No.	Rep	Project Name
See Below		KS	Lee Bell_003

Description	Qty	Rate	Total
Concrete curb to support new fence line along street (approx 35 linear feet of 12" high x 8" wide)	35	69.00	2,415.00T
Roll-on black slurry seal to form "runway" around two sides of play box (approx 300 sq/ft). Slurry to be rolled onto existing concrete walkways (approx 5' wide). Client to supply/install yellow thermal striping after slurry seal has been applied.	300	9.00	2,700.00T
*Client to remove existing building and prepare site inclusive of but not limited to: clearing and grubbing site.			

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Total



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Terms	P.O. No.	Rep	Project Name
See Below		KS	Lee Bell_003
Description	Qty	Rate	Total
<p>*MPI can supply concrete walkways around play area for additional charge*</p> <p>*Scope to be defined after client meeting*</p> <p>* Install is inclusive of prevailing wages.</p> <p>*Purchase to be made off of Miracle's NJPA contract - no bid required: NJPA # 030117-LTS. Fairfield's NJPA contract number 32183</p> <p>*Payment Terms: 50% with order, 50% Net-30 upon completion</p>			

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Subtotal	\$82,404.50
Sales Tax (8.375%)	\$4,402.12
Total	\$86,806.62

EXHIBIT "B"

PAYMENT

1) The total contract price for services rendered by CONTRACTOR under this Agreement shall not exceed Eighty-Six Thousand, Eight Hundred Six and 62/100 Dollars (\$86,806.62).

2) Payment shall be made to CONTRACTOR based on monthly progress billings and final invoice. Final invoice to be submitted on completion of scope of work set forth in Exhibit "A".

3) Any additional meetings or work required beyond that set forth in Exhibit "A" shall be mutually agreed to by the CITY and CONTRACTOR, and shall be billed on a time and materials basis to the City of Fairfield, Attention: Fred Beiner.

EXHIBIT "C"

GENERAL PROVISIONS

1) **INDEPENDENT CONTRACTOR.** At all times during the term of this Agreement, CONTRACTOR shall be an independent Contractor and shall not be an employee of CITY. CITY shall have the right to control CONTRACTOR only insofar as the results of CONTRACTOR's services rendered pursuant to this Agreement; however, CITY shall not have the right to control the means by which CONTRACTOR accomplishes services rendered pursuant to this Agreement.

2) **LICENSES; PERMITS; ETC.** CONTRACTOR represents and warrants to CITY that CONTRACTOR has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONTRACTOR to practice CONTRACTOR's profession. CONTRACTOR represents and warrants to CITY that CONTRACTOR shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONTRACTOR to practice his profession.

3) **TIME.** CONTRACTOR shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONTRACTOR's obligations pursuant to this Agreement. CONTRACTOR shall adhere to the Schedule of Activities as described in their Executive Summary.

4) **CONTRACTOR NOT AN AGENT.** Except as CITY may specify in writing, CONTRACTOR shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR shall have no authority, express or implied, pursuant to this Agreement, to bind CITY to any obligation whatsoever.

5) **ASSIGNMENT PROHIBITED.** No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

6) **PERSONNEL.** CONTRACTOR shall assign only competent personnel to perform services pursuant to this Agreement. In the event that CITY, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONTRACTOR to perform services pursuant to this Agreement, CONTRACTOR shall remove any such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person or persons.

7) **STANDARD OF PERFORMANCE.** CONTRACTOR shall perform all services required pursuant to this Agreement. Services shall be performed in the manner and according to the standards observed by a competent practitioner of the profession in which CONTRACTOR is engaged in the geographical area in which CONTRACTOR practices his profession. All products which CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CITY shall be the sole judge as to whether the product of the CONTRACTOR is satisfactory.

8) CANCELLATION OF AGREEMENT. This Agreement may be canceled at any time by the CITY at its discretion upon written notification to CONTRACTOR. CONTRACTOR is entitled to receive full payment for all services performed and all costs incurred up to and including the date of receipt of written notice to cease work on the project. CONTRACTOR shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work. All completed and incomplete products up to the date of receipt of written notice to cease work shall become the property of CITY.

9) PRODUCTS OF CONSULTING. All products of the CONTRACTOR provided under this Agreement shall be the property of the CITY.

10) INDEMNIFY AND HOLD HARMLESS.

a) CONTRACTOR shall indemnify, defend, and hold harmless the CITY, its officers, agents, employees and volunteers from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by CONTRACTOR or any person directly or indirectly employed by or acting as agent for CONTRACTOR in the performance of this Agreement, including the concurrent or successive passive negligence of the CITY, its officers, agents, employees or volunteers.

It is understood that the duty of CONTRACTOR to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONTRACTOR from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies are determined to be applicable to any such damages or claims for damages.

11) PROHIBITED INTERESTS. No employee of the CITY shall have any direct financial interest in this agreement. This agreement shall be voidable at the option of the CITY if this provision is violated.

12) LOCAL EMPLOYMENT POLICY. The CITY desires wherever possible, to hire qualified local residents to work on city projects. Local resident is defined as a person who resides in Solano County. The CITY encourages an active affirmative action program on the part of its contractors, consultants and developers. When local projects require, subcontractors, contractors, consultants and developers will solicit proposals from qualified local firms where possible.

As a way of responding to the provisions of the Davis-Bacon Act and this program, contractor, consultants, and developers will be asked, to provide no more frequently than monthly, a report which lists the employee's name, job class, hours worked, salary paid, city of residence, and ethnic origin.

13) CONTRACTOR NOT A PUBLIC OFFICIAL. CONTRACTOR is not a "public official" for purposes of Government Code §§ 87200 et seq. CONTRACTOR conducts research and arrives at his or her conclusions, advice, recommendation, or counsel independent of the control and direction of the CITY or any CITY official, other than normal contract monitoring. In addition, CONTRACTOR possesses no authority with respect to any CITY decision beyond these conclusions, advice, recommendation, or counsel.

14) EMPLOYMENT DEVELOPMENT DEPARTMENT REPORTING REQUIREMENTS. When the CITY executes an agreement for or makes payment to CONTRACTOR in the amount of \$600 (six hundred dollars) or more in any one calendar year, CONTRACTOR shall provide the following information to CITY to comply with Employment Development Department (EDD) reporting requirements:

a) Whether CONTRACTOR is doing business as a sole proprietorship, partnership, limited liability partnership, corporation, limited liability corporation, non-profit corporation or other form of organization.

b) If CONTRACTOR is doing business as a sole proprietorship, CONTRACTOR shall provide the full name, address and social security number or federal tax identification number of the sole proprietor.

c) If CONTRACTOR is doing business as other than a sole proprietorship, CONTRACTOR shall provide CONTRACTOR's federal tax identification number.

EXHIBIT "D"

INSURANCE REQUIREMENTS

CONTRACTOR shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONTRACTOR, his agents, representatives, or employees.

1) MINIMUM SCOPE AND LIMITS OF INSURANCE

a) Commercial General Liability coverage (occurrence Form CG 00 01) with minimum limits of \$3,000,000 per occurrence for bodily injury, personal injury, products and completed operations, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b) Automobile Liability coverage (Form CA 00 01 with Code 1 – any auto) with minimum limits of \$1,000,000 per accident for bodily injury and property damage.

c) Workers' Compensation insurance as required by the State of California and Employers' Liability insurance, each in the amount of \$1,000,000 per accident for bodily injury or disease.

2) INDUSTRY SPECIFIC COVERAGES

If checked below, the following insurance is also required.

- ☐ Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$1,000,000 per occurrence.
- ☐ Pollution Liability Insurance in the minimum amount of \$1,000,000 per occurrence
- ☐ Garage Keepers Insurance in the minimum amount of \$1,000,000 per occurrence
- ☐ Fidelity / Crime / Dishonesty Bond in the minimum amount of \$_____
- ☐ MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants
- ☐ Builder's Risk / Course of Construction Insurance in the minimum amount of \$_____.

3) INSURANCE PROVISIONS

a) DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

b) The general and automobile liability policies (and if applicable, pollution liability, garage keepers liability and builder's risk policies) are to contain, or be endorsed to contain, the following provisions:

- i) The CITY, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the CONTRACTOR; products and completed operations of the CONTRACTOR; premises owned, occupied or used by the CONTRACTOR; or automobiles owned, leased, hired or borrowed by the CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees or volunteers.
- ii) For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the CITY, its officers, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
- iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.
- iv) The CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.
- vi) The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the CONTRACTOR's policy limits of coverage.

c) ACCEPTABILITY OF INSURER. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the CITY.

d) VERIFICATION OF COVERAGE. CONTRACTOR shall furnish the CITY with original endorsements effecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the CITY or on forms equivalent to CG 20 10 11 85 subject to CITY approval. All insurance certificates and endorsements are to be received and approved by the CITY before work commences. At the request of the CITY, CONTRACTOR shall provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

e) SUB-CONTRACTORS. CONTRACTOR shall require all sub-Contractor s to procure and maintain insurance policies subject to the requirements of Exhibit D. Failure of CONTRACTOR to verify existence of sub-contractor's insurance shall not relieve CONTRACTOR from any claim arising from sub-contractor s work on behalf of CONTRACTOR.